

ORDINANCE NO. 3177

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN LUIS OBISPO ESTABLISHING THE SAN LUIS OBISPO COUNTY TOURISM BUSINESS IMPROVEMENT DISTRICT (SLOCTBID), FIXING THE BOUNDARIES THEREOF, PROVIDING FOR THE LEVY OF A BUSINESS ASSESSMENT TO BE PAID BY LODGING BUSINESSES IN SUCH DISTRICT

The Board of Supervisors of the County of San Luis Obispo does ordain as follows:

Section 1. (a) On February 3, 2009, the Board of Supervisors of the County of San Luis Obispo adopted Resolution No. 2009-38 entitled, "A Resolution of the Board of Supervisors of the County of San Luis Obispo Declaring Its Intention to Establish the San Luis Obispo County Tourism Business Improvement District (SLOCTBID), Declaring Its Intention to Levy an Assessment on Lodging Businesses within such District for beginning Fiscal Year 2008-09, and Fixing the Time and Place of a Public Meeting and a Public Hearing Thereon and Giving Notice Thereof".

(b) Said Resolution No. 2009-38 was published and copies thereof were duly mailed and posted, all as provided by said law and said Resolution No. 2009-38.

(c) Pursuant to said Resolution No. 2009-38, a public meeting concerning the formation of said District was held before the Board of Supervisors of the County of San Luis Obispo on **March 3, 2009** at 9:00 a.m. in the Board Chambers of the County of San Luis Obispo.

(d) Pursuant to said Resolution No. 2009-38, a public hearing concerning the formation of said District was held before the Board of Supervisors of the County of San Luis Obispo on **April 7, 2009** at 9:00 a.m. in the Board Chambers of the County of San Luis Obispo. The April 7, 2009 public hearing was continued to May 5, 2009.

(e) All written and oral protests made or filed were duly heard, evidence for and against the proposed action was received, and a full, fair and complete hearing was granted and held.

(f) The Board of Supervisors determined that there was no majority protest within the meaning of Section 36525 of the Streets and Highways Code. A majority protest is defined as written protests received from owners of lodging businesses in the proposed area which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business. For purposes of the initial formation of the District, the proposed assessment to be levied was calculated based on the assessment rate multiplied by the most recent available data for the lodging businesses' rental revenue.

(g) Following such hearing, the Board of Supervisors hereby finds that the lodging businesses lying within the District herein created, in the opinion of the Board,

will be benefited by the expenditures of funds raised by the assessment or charges proposed to be levied hereunder.

(h) Pursuant to said law, the San Luis Obispo County Tourism Business Improvement District (SLOCTBID) is hereby established in those portions of the unincorporated area of County of San Luis Obispo as herein set forth and that all lodging businesses in the District established by this ordinance shall be subject to any amendments made hereafter to said law or to other applicable laws.

Section 2: The County Code is hereby amended by enacting, adopting and adding thereto Chapter 3.09 in Title 3. Chapter 3.09 is hereby added to the County Code to read as follows:

Title 3, Chapter 3.09

SAN LUIS OBISPO COUNTY TOURISM BUSINESS IMPROVEMENT DISTRICT

3.09.010. **TITLE.** This ordinance shall be known as the "San Luis Obispo County Tourism Business Improvement District Ordinance of the County of San Luis Obispo."

3.09.020. **DEFINITIONS.**

(1) "County Advisory Board" shall mean the County Advisory Board appointed by the San Luis Obispo County Board of Supervisors, pursuant to this chapter.

(2) "District" shall mean the San Luis Obispo County Tourism Business Improvement District or SLOCTBID created by this chapter and as delineated in Section 3.09.040.

(3) "Lodging" shall mean any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, motel, bed and breakfast, or vacation home and pays Transient Occupancy Tax. For purposes of this ordinance the definition of "lodging" shall not include RV Parks.

(4) "Law" shall mean the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 to 36551, as amended.

(5) "San Luis Obispo County Tourism Business Improvement District" or "SLOCTBID" means the District created by this chapter as a business improvement District pursuant to the Parking and Business Improvement Area Law of 1989.

(6) "Local Advisory Board" shall mean the Local Advisory Board(s) appointed by a City Council in the case of an incorporated city or the County Board of Supervisors in the case of the unincorporated are pursuant to this chapter.

(7) "County Contractor" means a business or a California non-profit corporation. The contractor shall have significant expertise in tourism promotion.

(8) "Operator" means the person who is the proprietor of the lodging business, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal of the managing agent shall, however, be considered to be compliance by both.

(9) "Transient" means any person who exercises occupancy or who is entitled to occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

3.09.030. AUTHORIZED USES. This ordinance is made and enacted pursuant to the provisions of the Parking and Business Improvement Area Law of 1989 (Sections 36500, et. seq., of the Streets and Highways Code) (the "law"). The purpose of forming the District as a business improvement area under the Parking and Business Improvement Area Law of 1989 is to provide revenue to defray the costs of services, activities and programs promoting tourism which will benefit the operators of lodging businesses in the District through the promotion of scenic, recreational, cultural and other attractions in the District as a tourist destination. It is the intent of this chapter to provide a supplemental source of funding for the promotion of tourism in the District and it is not intended to supplant any other existing sources of revenues which may be used by the County of San Luis Obispo for the promotion of tourism. The specific services, activities and programs to be provided by the District are as follows:

A. The general promotion of tourism within the District is to include costs as specified in the business plan to be adopted annually;

B. The marketing of conference, group, and film business that benefits local tourism and the local lodging industry within the District;

C. The marketing of the District to the travel industry in order to benefit local tourism and the local lodging industry within the District;

D. A Sustainability and Stewardship fund allowing for the promotion, creation, and protection of our area's cultural, environmental, recreational, historical and infrastructure assets involved in the promotion of tourism within the District;

E. Administrative costs associated with implementing the above tasks related to the contracting services.

3.09.040. BOUNDARIES. The boundaries of the SLOCTBID shall be all properties in the unincorporated boundaries of the County of San Luis Obispo located within the North Coast, Estero, San Luis Bay Coastal, and South County Coastal planning areas set forth in the Land Use Element – Circulation Element of the San Luis Obispo County General Plan and within the San Luis Bay Inland, South County Inland, Los Padres, Huasna-Lopez and San Luis Obispo planning areas as set forth in Title 22, Chapters 22.106, 22.112, 22.100, 22.96, and 22.108 respectively.

3.09.050. LEVY OF ASSESSMENT AND EXEMPTIONS. The SLOCTBID shall include all lodging businesses located within the SLOCTBID boundaries. The assessment shall be levied on all lodging businesses, existing and future, within the boundaries of the SLOCTBID based upon two percent (2%) of the paid rent charged by the operator per occupied room per night for all transient occupancies. The assessment shall be collected in monthly installments or such other installments as determined by the collecting agency, based on two percent (2%) of the rent charged by the operator per occupied room per night in revenues for the previous month. New lodging businesses within the boundaries shall not be exempt from the levy of assessment authorized by Section 36531 of the law. Assessments pursuant to the SLOCTBID shall not be included in gross room rental revenue for purpose of determining the amount of the transient occupancy tax. The value of extended stays of more than thirty (30) consecutive calendar days shall be exempt from the levy of assessment. Any other exclusion shall be based on benefit and the policies and ordinances of the collecting agency.

3.09.060. ANNUAL REVIEW OF ASSESSMENT. All of the assessments imposed pursuant to this chapter shall be reviewed by the Board of Supervisors annually, based upon the annual report prepared by the County Advisory Board appointed pursuant to this chapter and Sections 36530 and 36533 of the law. After approval of the annual report the Board of Supervisors shall follow the hearing process as outlined in Section 36534 of the law. At the public hearing the Board of Supervisors shall hear and consider all protests. If written protests are received from lodging businesses in the District paying fifty percent (50%) percent or more of the annual assessment, no further proceedings to continue the levy of assessments shall take place. The protests shall be weighted based upon the annual assessment for the prior year by each lodging business.

3.09.070. IMPOSITION OF ASSESSMENT. The Board of Supervisors hereby levies and imposes and orders the collection of an additional assessment to be imposed upon lodging businesses in the District described above, which shall be calculated pursuant to Section 3.09.050 above. Such levy shall begin on July 1, 2009.

3.09.080. USE OF REVENUE. The activities to be provided by the SLOCTBID will be funded by the levy of the assessments. The revenue from the levy of assessments within the SLOCTBID shall not be used to provide improvements or activities outside the SLOCTBID or for any purpose other than the purposes specified in this ordinance. Fifty percent (50%) of the proceeds of the lodging business assessment shall be spent for marketing and visitor programs to promote the SLOCTBID. The other fifty percent (50%) of the proceeds of the lodging businesses assessment ("the Local

50%") is intended to be used to promote tourism in the Local Area in which the funds are collected. For those areas within the unincorporated area of the County that create a Local Advisory Board, the County shall disburse the Local 50% portion of the revenue collected within that area of the unincorporated area to the designated County Contractor. The County Advisory Board shall make recommendations to the County Board of Supervisors as to the boundaries of the Local Areas within the unincorporated area of the County. All funds shall be expended consistent with the purposes of this ordinance. Funds remaining at the end of any SLOCTBID term may be used in subsequent years in which SLOCTBID assessments are levied as long as they are used consistent with the requirements of this Section. The Board of Supervisors of the County of San Luis Obispo shall consider recommendations made by the County Advisory Board created by Section 3.09.100 of this ordinance as to the use of assessment revenue. The designated County Contractor shall consider the recommendations made by the Local Advisory Board as to the use of the Local 50% portion of the revenue collected in the unincorporated area(s). Each local lead tourism promotion entity shall consider recommendations made by its Local Advisory Board as to the use of assessment revenue collected in that incorporated area. The Local Advisory Boards described above shall be comprised of representatives of businesses paying SLOCTBID assessment within its jurisdiction or boundary.

3.09.090. DELINQUENCY, PENALTY AND INTEREST. Any lodging business that fails to remit any assessment imposed by this ordinance within the time required shall pay a penalty in accordance with the policies and ordinances of the collecting agency. Collecting agencies shall be responsible for collecting delinquencies to the extent that the agencies' TOT collections are delinquent. Any penalty and interest fees collected from a lodging business due to delinquency shall go to the agency that collected the delinquent assessments.

3.09.100. COUNTY ADVISORY BOARD. A County Advisory Board comprised of up to seven (7) members, with a minimum of five (5) members, is hereby created to carry out the functions of an advisory board under Section 36530 of the law. Members must be an owner and/or designated appointee of a hotel, motel, bed and breakfast or vacation home rental within the SLOCTBID and will be appointed by the Board of Supervisors. The County Advisory Board should have balanced representation from the various geographical areas of the District and the various types of lodging businesses within the District. The Board of Supervisors shall consider recommendations from the existing SLOCTBID Steering Committee for initial appointments. The Board of Supervisors shall consider recommendations from the County Advisory Board for subsequent appointments to the County Advisory Board. All persons appointed to the County Advisory Board must be nominated by a process established by the Board of Supervisors. All nominees and members must be operators of a lodging business within the District, or employed by the operator of such a lodging business. The initial members of the County Advisory Board shall serve staggered terms, with half of the members serving a two-year term, and the remaining members serving a four-year term. The length of the term for each individual member of the initial County Advisory Board shall be chosen by lot at the first meeting of the County Advisory Board. Thereafter, all members subsequently appointed to the County Advisory Board shall serve for four-year terms. Members of the County Advisory Board shall serve at the

pleasure of the Board of Supervisors and may be removed by the Board of Supervisors at any time. If the members no longer represent the lodging establishment for which they were selected to the County Advisory Board, their seat will be vacated and a new member will be appointed representing the same jurisdiction in the SLOCTBID District. The County Advisory Board shall review the implementation of this ordinance, the implementation of programs and activities funded through this ordinance, and advise the Board of Supervisors on the amount of the SLOCTBID's area's assessments and on the services, programs, and activities to be funded by the Assessments, and shall perform such other duties as required by the law, including preparing the Annual Report required by Section 36533 of the law.

3.09.110. ANNUAL REPORTING. The Annual Report, as required by Section 36533 of the law, shall be submitted to the County by the County Advisory Board within sixty days of the close of the County's fiscal year, beginning in Fiscal Year 2009-10. For those incorporated cities that create a Local Advisory Board, that city shall determine annual reporting requirements of the City's designated local lead tourism promotion entity, as determined by Section 36533 of the law. For those areas within the unincorporated area of the County that create a Local Advisory Board, an Annual Report shall be submitted, as required by Section 36533 of the law, by the County Advisory Board within thirty days of the close of the County's fiscal year beginning Fiscal Year 2009-10.

Furthermore the Board of Supervisors shall require that the contract with the designated County Contractor include the requirement that the County Contractor assist the County Advisory Board with the preparation of the Annual Report that details the SLOCTBID's and unincorporated Local Areas' activities for the current contract year and recommendations for the upcoming contract year. This report shall include such effectiveness measures as recommended by the County Advisory Board and incorporated by the County in its contract with the County Contractor.

Funds collected from the SLOCTBID assessment may be used to provide the County Contractor staff and other support to the County Advisory Board in execution of its duties. The Board of Supervisors shall ensure that the County Advisory Board has timely access to all public information regarding collection, disbursement, and uses of the funds collected under the terms of this ordinance.

3.09.120. COLLECTION, ENFORCEMENT AND ADMINISTRATIVE FEES. Each City and County may retain actual collection costs not to exceed two percent (2%) of the assessments collected from operators of lodging businesses within their jurisdiction as an administrative fee to defer the administrative costs incurred for the operation of the District. The County for the unincorporated area shall be responsible for the collection and enforcement of assessments from lodging businesses within their jurisdictional boundaries. The County for the unincorporated area shall keep any additional collection fees, penalty fees, and interest collected associated with collections or actions due to nonpayment of assessments. Assessments will be collected in monthly installments or such other installments as determined by the collecting agency. The San Luis Obispo County Tax Collector for the unincorporated area shall transfer all assessments, less the aforementioned initial administrative fee, to the selected County

Contractor within thirty (30) days following collection of the assessment by the applicable city and the county.

3.09.130. DESIGNATED CONTRACTOR. The initial contractor will be selected in compliance with approval County contracting procedures. A contract will be entered into with the designated contractor for the expenditure of such funds by the designated contractor for the services, activities and programs authorized for the District. The County Advisory Board may recommend termination of the contract for non-performance at any time during the contract. If such a recommendation is made the County will either terminate the contract or inform the County Advisory Board of the reasons for its decision to not follow the County Advisory Board's recommendation.

3.09.140. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

3.09.150. MODIFICATION OR DISESTABLISHMENT. The County, by ordinance, may modify the provisions of this chapter and may disestablish the District or parts of the District, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the area, and shall state the time and place of a hearing to be held by the Board of Supervisors to consider the proposed action. If the operators of lodging which pay fifty percent (50%) or more of the assessments in the District file a petition with the Clerk of the Board requesting the Board of Supervisors to adopt a resolution of intention to modify or disestablish the District, the Board of Supervisors shall adopt such resolution and act upon it as required by law. Signatures on such petition shall be those of a duly authorized representative of the operators of a lodging business in the District.

In the event the resolution proposes to modify any of the provisions of this chapter, including changes in the existing assessments or in the existing boundaries of the District, such proceedings shall terminate if protest is made by the operators of lodging businesses which pay fifty percent (50%) or more of the assessments in the District, or in the District as it is proposed to be enlarged.

In the event the resolution proposes disestablishment of the District, the Board of Supervisors shall disestablish the District; unless at such hearing, protest against disestablishment is made by the operators of lodging businesses paying fifty percent (50%) or more of the assessments in the District.

If at anytime a City that has given consent to the formation of the District decides to withdraw said consent, the County shall no longer operate the District within that City. Said withdrawal shall be in the form of a resolution of the City Council of the withdrawing City. The levy shall terminate within the City's boundaries at the time of the

next annual renewal. The District would be renewed as modified without the City that has withdrawn its consent.

3.09.160. EFFECTIVE DATE. The Clerk of the Board shall certify to the passage of this ordinance by the Board of Supervisors and cause it to be posted in three conspicuous places in the County of San Luis Obispo, and it shall take effect on July 1, 2009.

Introduced and first read at a public hearing of the Board of Supervisors on the 5th day of May, 2009, and thereafter

PASSED AND ADOPTED at a public meeting before the Board of Supervisors on the 12th day of May, 2009.

By the following vote, to wit:

Ayes: Supervisors: Chairperson Bruce S. Gibson, Adam Hill, Frank Mecham, K.H. 'Katcho' Achadjian, James R. Patterson

Noes: None

Absent: None

/s/Bruce S. Gibson

Chairman of the Board of Supervisors of the
County of San Luis Obispo, State of California

ATTEST

JULIE L. RODEWALD

Clerk of the Board of Supervisors and Ex-Officio of the
Board of Supervisors, County of San Luis Obispo,
State of California

By: AmChristensen, Deputy Clerk